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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,162	04/12/2005	Peter Zatloukal	109909-141790	3236
25943 7590 10/05/2007 SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			EXAMINER ALI, FARHAD	
			ART UNIT 2146	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,162	<b>Applicant(s)</b> ZATLOUKAL ET AL.	
	<b>Examiner</b> Farhad Ali	<b>Art Unit</b> 2146	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 29-33 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 29-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/11/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-8, 10-11, 15-19, 29-30, and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Alperovich et al. (US 6,298,247 B1) hereinafter Alperovich.

Alperovich teaches:

#### **Claim 1**

In a mobile client device, a method of operation comprising (Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline phone, portable station, a hand-held station, a hands-free station or a vehicle-installed station for use in a wireless telecommunications network"):

determining by the mobile client device, a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal; and

the mobile client device providing a second audio signal at a second audio volume level to the user, the second audio volume level being based at least in part on the first audio volume level initially (Column 3 Lines 39-42, "VC1402 may perform

volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408”).

### **Claim 2**

The method of claim 1, wherein said determining comprises the mobile client device determining a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal corresponding to music associated with output of at least one of an MP3 player and a radio (Column 3 Lines 29-34, “primary audio signal 406 is the signal resulting from radio signals received by MS 400 from a remote base station system”) included with the mobile client device (Column 3 Lines 39-42, “VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408”).

### **Claim 4**

The method of claim 1 further comprising the mobile client device incrementally increasing the second audio volume level from the initial volume level based at least in part on the first audio volume level (Column 3 Lines 39-42, “VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408” and See figure 3, “Increase volume command or Decrease volume command”).

**Claim 5**

The method of claim 4, wherein said incrementally increasing the second audio volume level comprises incrementally increasing the second audio volume level to an upper audio volume level limit of the mobile client device (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

**Claim 6**

The method of claim 4, wherein said incrementally increasing the second audio volume level comprises incrementally increasing the second audio volume level by a selected one of a constant increment and an increasing increment (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

**Claim 7**

The method of claim 1, wherein said determining comprises the mobile client device determining a first audio volume level measured as audio power levels (See Figure 3, "Measurement report (db)").

**Claim 8**

The method of claim 7, wherein said determining a first audio volume level comprises the mobile client device determining a first audio volume level measured as at least one of volts, watts, and decibels (See Figure 3, "Measurement report (db)").

**Claim 10**

A wireless mobile phone comprising (Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline phone, portable station, a hand-held station, a hands-free station or a vehicle-installed station for use in a wireless telecommunications network"):

a first audio resource, the first audio resource equipped to provide a first audio signal at a first audio volume level at which the mobile phone is being utilized by a user for the first audio signal; and

a second audio resource, wherein the second audio resource is equipped to provide a second audio signal at a second audio volume level to the user, the second audio volume level being based at least in part on the first audio volume level initially.

(Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408").

**Claim 11**

The wireless mobile phone of claim 10, wherein the first audio resource comprises at least one of an MP3 player and a radio (Column 3 Lines 29-34, "primary audio signal 406 is the signal resulting from radio signals received by MS 400 from a remote base station system").

**Claim 15**

The wireless mobile phone of claim 10, wherein the second audio resource further comprises a second audio resource equipped to incrementally increase the second audio volume level from the initial volume level based at least in part on the first audio volume level (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

**Claim 16**

The wireless mobile phone of claim 15, wherein the second audio resource equipped to incrementally increase the second audio volume level comprises a second audio resource equipped to incrementally increase the second audio volume level to an upper audio volume level limit of the wireless mobile phone (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on

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primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

#### **Claim 17**

The wireless mobile phone of claim 15, wherein the second audio resource equipped to incrementally increase the second audio volume level comprises a second audio resource equipped to incrementally increase the second audio volume level by a selected one of a constant increment and an increasing increment (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

#### **Claim 18**

The wireless mobile phone of claim 10, wherein the first and second audio volumes levels comprises a first and second audio volume levels measured as audio power levels (See Figure 3, "Measurement report (db)").

#### **Claim 19**

The wireless mobile phone of claim 18, wherein the audio power levels comprises audio power levels measured in at least one of volts, watts, and decibels (See Figure 3, "Measurement report (db)").



**Claim 29**

A mobile client device comprising (Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline phone, portable station, a hand-held station, a hands-free station or a vehicle-installed station for use in a wireless telecommunications network")::

a storage medium having stored therein a plurality of programming instructions (Column 2 Lines 50-56, "ENMD 102 may also be communicably coupled to a memory module (MM) 108, such as a SIM or smart card, via an interface 110. MM 108 is a device within MS 100 for storing subscriber-related information, including the subscriber's volume control data, and associated software supporting the volume control application"), which when executed, the instructions cause the mobile client device to determine a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal, and provide a second audio signal at a second audio volume level to the user, the second audio volume level being based at least in part on the first audio volume level initially; and a processor coupled to the storage medium to execute the programming instructions (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408").

**Claim 30**

The mobile client device of claim 29, wherein said programming instructions, which when executed, cause the mobile client device to determine a first audio volume

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level at which the mobile client device is being utilized by a user for a first audio signal corresponding to music associated with output of at least one of an MP3 player and a radio (Column 3 Lines 29-34, "primary audio signal 406 is the signal resulting from radio signals received by MS 400 from a remote base station system") included with the mobile client device (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408").

### **Claim 32**

The mobile client device of claim 29, wherein said programming instructions, which when executed, cause the mobile client device to incrementally increase the second audio volume level from the initial volume level based at least in part on the first audio volume level (Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

### **Claim 33**

The mobile client device of claim 29, wherein said programming instructions, which when executed, cause the mobile client device to determine a first audio volume level measured as audio power levels (See Figure 3, "Measurement report (db)").

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 9, 12-14, 20, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alperovich et al. (US 6,298,247 B1) hereinafter Alperovich in view of Alberth, Jr. et al. (US 6,351,653 B1) hereinafter Alberth.

**Claim 3**

Alperovich does not specifically disclose the method of claim 1, wherein said providing comprises the mobile client device providing a second audio signal corresponding to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, and a wireless mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-4, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means. The first alarm has a

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low volume or other adjustments to compensate for the close proximity of the cellular telephone 110 to the user").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

#### **Claim 9**

Alperovich does not specifically disclose the method of claim 1, wherein said providing comprises the mobile client device mixing said first and second audio signals.

Alberth teaches in FIG. 3 #340 and 350 "Combine radio downlink signal and cellular downlink signal into combined audio signal" and "Convey combined audio signal to speaker" respectively.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

**Claim 12**

Alperovich does not specifically disclose the wireless mobile phone of claim 10, wherein the second audio resource comprises an audio resource equipped to receive a delivery of a message alert to the user.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

**Claim 13**

Alperovich does not specifically disclose the wireless mobile phone of claim 12, wherein the audio resource equipped to receive a delivery of a message alert comprises a ring tone generator.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

#### **Claim 14**

Alperovich does not specifically disclose the wireless mobile phone of claim 12, wherein the audio resource equipped to receive a delivery of a message alert comprises an audio resource equipped to receive a delivery of a message alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, and a wireless mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines

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whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

#### **Claim 20**

Alperovich does not specifically disclose the wireless mobile phone of claim 10 further comprising a mixer, the mixer equipped to mix the first and second audio signals.

Alberth teaches in FIG. 3 #340 and 350 "Combine radio downlink signal and cellular downlink signal into combined audio signal" and "Convey combined audio signal to speaker" respectively.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

**Claim 31**

Alperovich does not specifically disclose the mobile client device of claim 29, wherein said programming instructions, which when executed, cause the mobile client device to provide a second audio signal corresponding to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, and a wireless mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teaches Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farhad Ali whose telephone number is (571) 270-1920. The examiner can normally be reached on Monday thru Friday, 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

F.A.



JEFFREY PWU  
SUPERVISORY PATENT EXAMINER